

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

The insurance benefits paid in connection with foreclosed properties, whether or not conveyed to the Commissioner; and those properties conveyed to the Commissioner as a result of a deed in lieu of foreclosure; and those properties sold under an approved pre-foreclosure sale shall include the following items:

(a) Taxes, ground rent and water rates, which are liens prior to the mortgage;

(b) Special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage.

(c) Hazard insurance premiums on the mortgaged property not in excess of a *reasonable rate* as defined in § 203.379(a)(4).

(d) Periodic MIP or open-end insurance charges;

(e) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner, or was acquired by the mortgagee and retained pursuant to § 203.368;

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to HUD, but not including any costs borne by the mortgagee to correct title defects) actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or \$75, whichever is the greater. For mortgages insured on or after February 1, 1998, the Secretary will reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as the Secretary shall prescribe. Where the foreclosure involves a mortgage sold by the Secretary on or after August 1, 1969, or a mortgage executed in connection with the sale of property by the Secretary on or after such date, the mortgagee shall be reimbursed (in addition to the amount determined under the foregoing) for any extra costs incurred in the foreclosure as a result of

a defect in the mortgage instrument, or a defect in the mortgage transaction or a defect in title which existed at or prior to the time the mortgage (or its assignment by the Secretary) was filed for record, if the mortgagee establishes to the satisfaction of the Commissioner that such extra costs are over and above those customarily incurred in the area.

(g)(1) *For mortgages insured under firm commitments issued before November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter before November 19, 1992*, reasonable payments made by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating, or preserving the property, or removing debris from the property.

(2) *For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992*, reasonable payments made by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating, or preserving the property, or removing debris from the property prior to the time of conveyance required by § 203.359 of this part.

(3) Reasonable costs for performing the inspections required by § 203.377 of this part and to determine if the property is vacant or abandoned are considered to be costs of protecting, operating or preserving the property.

(h) Any uncollected mortgage interest allowed pursuant to an approved forbearance plan;

(i) An amount which the Commissioner finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of any MIP and open-end insurance charge by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means under a mortgage to which the provisions of sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, apply during any part or all

of the period of the mortgagor's military service and three months thereafter;

(j) Charges for the administration, operation, maintenance or repair of community-owned property or the maintenance and repair of the mortgaged property paid by the mortgagee with respect to which it certifies to the Secretary that payment was made for the purpose of discharging an obligation arising out of a covenant filed for record and approved by the Secretary prior to the issuance of the mortgage; and charges for the repair of the mortgaged property required by and in an amount authorized by the Secretary under § 203.379 of this part;

(k)(1) For properties conveyed to the Secretary, an amount equivalent to the debenture interest which would have been earned, as of the date such payment is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures, except that:

(i) When the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203.356(b), 203.359, 203.360, 203.365, 203.606(b)(1), or 203.366 within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended;

(ii) When the mortgagee fails to meet the requirements of § 203.356(a) of this part within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed to a date set administratively by the Secretary.

(2) Where a claim for insurance benefits is being paid without conveyance of title to the Commissioner in accordance with § 203.368, an amount equivalent to the sum of:

(i) The debenture interest which would have been earned, as of the date the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property, on an amount equal to the amount by

which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(ii) The debenture interest which would have been earned, from the date the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash if such portion had been paid in debentures, except that if the mortgagee fails to meet any of the applicable requirements of §§ 203.355, 203.356, 203.368(i) (3) and (5) of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(3) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner in accordance with § 203.370, an amount equivalent to the sum of:

(i) The debenture interest which would have been earned, as of the date of the closing of the pre-foreclosure sale, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(ii) The debenture interest which would have been earned, from the date of the closing of the pre-foreclosure sale to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash if such portion had been paid in debentures, except that if the mortgagee fails to meet any of the applicable requirements of § 203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(l) Reasonable costs of appraisal under § 203.368(e) or pursuant to § 203.370;

(m) Costs of additional advertising under 203.368(h);

(n) Costs of foreclosure as computed in paragraph (f) of this section where the acquiring party is one other than the mortgagee, as provided in § 203.368;

(o) In any case in which the Commissioner, pursuant to § 203.369, requires or requests that the mortgagee seek a deficiency judgment, an amount necessary to reimburse the mortgagee for those additional costs incurred that exceed the costs of foreclosure. In those jurisdictions that require the initiation of a judicial foreclosure action in order to obtain a deficiency judgment, a mortgagee shall receive full reimbursement for the costs of the foreclosure action, where, but for the requested deficiency judgment, judicial foreclosure would not have been necessary.

(p) An amount approved by HUD and paid to the mortgagor as consideration for the execution of a deed in lieu of foreclosure and, if authorized by HUD, an administrative fee approved by HUD paid to the mortgagee for its role in facilitating a successful deed in lieu of foreclosure, not to be subject to the payment of debenture interest thereon.

(q) Reasonable costs incurred in evicting occupants and in removing personal property from acquired properties;

(r) Notwithstanding any other provision in this section, the mortgagee will not be reimbursed for any expenses incurred in connection with the property after a reconveyance from the Secretary to the mortgagee as provided in § 203.363(b) of this part.

(s) Reasonable costs of the title search ordered by the mortgagee, in accordance with procedures prescribed by HUD, to determine the status of a mortgagor meeting all other criteria for approval to participate in the pre-foreclosure sale procedure, or to determine if a mortgagor meets the criteria for approval of the mortgagee's acceptance of a deed in lieu of foreclosure.

(t) The administrative fee as authorized by the Secretary and payable to the mortgagee for its role in facilitating a successful pre-foreclosure sale,

said fee not to be subject to the payment of debenture interest thereon.

[36 FR 34508, Dec. 22, 1971, as amended at 41 FR 49736, Nov. 10, 1976; 45 FR 56801, Aug. 6, 1980; 48 FR 28806, June 23, 1983; 51 FR 28551, Aug. 8, 1986; 52 FR 1329, Feb. 13, 1987; 53 FR 4388, Feb. 16, 1988; 57 FR 47974, Oct. 20, 1992; 59 FR 50145, Sept. 30, 1994; 61 FR 35018, July 3, 1996; 61 FR 36266, July 9, 1996; 61 FR 36453, July 10, 1996; 62 FR 60130, Nov. 6, 1997]

§ 203.402a Reimbursement for uncollected interest.

The mortgagee shall be entitled to receive an allowance in the insurance settlement for unpaid mortgage interest if the mortgagor fails to meet the requirements of a forbearance agreement entered into pursuant to § 203.614 and this failure continues for a period of 60 days. The interest allowance shall be computed to:

(a) The earliest of the applicable following dates, except as provided in paragraph (b) of this section:

(1) The date of the initiation of foreclosure;

(2) The date of the acquisition of the property by the mortgagee by means other than foreclosure;

(3) The date the property was acquired by the Commissioner under a direct conveyance from the mortgagor;

(4) Ninety days following the date the mortgagor fails to meet the requirements of the forbearance agreement, or such other date as the Commissioner may approve in writing prior to the expiration of the 90-day period; or

(5) The date the mortgagee sends the mortgagor notice of eligibility to participate in the Pre-Foreclosure Sale procedure; or

(b) The date foreclosure is initiated or a deed in lieu is obtained, or the date such actions were required by § 203.355(c), whichever is earlier, if the commencement of foreclosure within the time limits described in § 203.355(a), (b), (g), or (h) is precluded by:

(1) The laws of the State in which the mortgaged property is located; or

(2) Federal bankruptcy law.

[60 FR 57678, Nov. 16, 1995, as amended at 61 FR 35019, July 3, 1996]